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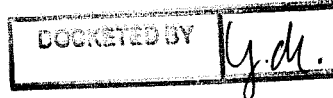
Arizona Corporation Commission

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COMMISSIONER

JUL 28 1999



IN THE MATTER OF THE APPLICATION  
OF TUCSON ELECTRIC POWER COMPANY  
FOR APPROVAL OF ITS STRANDED COST  
REVOCERY.

DOCKET NO. E-01933A-98-0471

IN THE MATTER OF THE FILING OF  
TUCSON ELECTRIC POWER COMPANY OF  
UNBUNDLED TARIFFS PURSUANT TO  
A.A.C. R14-2-1601 et seq.

DOCKET NO. E-01933A-97-0772

IN THE MATTER OF COMPETITION IN  
THE PROVISIONS OF ELECTRIC  
SERVICES THROUGHOUT THE STATE OF  
ARIZONA.

DOCKET NO. RE-00000C-94-0165

## NOTICE OF FILING

COMMENTS OF THE ARIZONA CONSUMERS COUCIL (COUNCIL)  
ON THE  
SETTLEMENT AGREEMENT FILED BY  
TUCSON ELECTRIC POWER COMPANY (TEP)

Pursuant to the Commission's Procedural Order dated June 23, 1999 the Arizona Consumers  
Council hereby files its comments on the above-captioned dockets.

In addition to the comments outlined below, the Council wishes to incorporate by reference all relevant comments made by Timothy S. Hogan, Center for Law in the Public Interest and attorney of record in these proceedings, made during the hearings on the proposed settlement with Arizona Public Service Company (APS), especially those regarding the Arizona Constitutional issues such as fair value, just and reasonable rates and the need for financial analyses that are relevant to these dockets.

Approval of the proposed Settlement Agreement with Tucson Electric Power Company appears to contradict Arizona Law. The proposed Settlement agreement does not provide for just and reasonable rates as determined by fair value. The agreement appears an attempt to tie the hands of this Commission and future Commissions, the Arizona Legislature and the people of the state of Arizona,

This proposal appears to negate the present Rules passed by this Commission in that it does not set a fair and reasonable **market** value for generation assets as required by the rules and decisions of this Commission. It also places standard offer and other consumers at risk of higher prices at the same time they are without real access to the competitive market. The agreement may have the unintended consequence of permitting cross subsidization from regulated to market organizations. It does not give ratepayers the opportunity to reduce their stranded cost payments or the CTC.

A few more specific problems are outlined below:

## **1. COMPETITIVE SERVICES**

1.2. Providing additional megawatts available for non-residential customers while holding residential consumers captive is unfair. Residential and other small consumers should have access to the benefits of restructuring.

1.3. There is no need to fast forward the process and cut off debate and deliberation on the benefits Vs costs to residential, small business and rural customers.

## **2. STRANDED COST RECOVERY**

2.1(b). What is the justification of a \$0.93 kWh fixed CTC? To accept this figure without a rate hearing or other method of determining what is, in fact, justifiable stranded costs figure based on fair value flies in the face of Constitutional protections for consumers. This proposal grants TEP and its shareholders the benefits and standard offer customers the risks.

(c). The floating CTC gives TEP the opportunity of collecting from captive customers not others especially those in the competitive market. It is an unfair risk to captive customers.

(d-f). How does this methodology compare with the cost of purchasing energy at market or as stated in the rules, the lowest bid price that the UDC is required to use?

(g) Securitization of stranded costs through the issuance of bonds has and continues to be opposed by the Arizona Consumers Council for the reasons stated in other proceedings.

(i) Self-generators or those who pay a reduced up front payment for their share of stranded cost must not be allowed to escape their fair share of payments for stranded cost recovery. Additionally, while this agreement changes some of the Rules, it does not benefit residential consumers who remain on standard offer. Standard Offer customers must pay 100% of their share of stranded costs; larger customers who go into the competitive market will have their stranded cost burden reduced. Where is the equality and fairness?

### **3. SEPARATION OF COMPETITIVE AND NON-COMPETITIVE**

3.1. How will market value be determined? Why change the present Rules for purchasing energy from a competitive source. The formation of subsidiaries must be in accordance with the present Rules on affiliates and must require full separation to prevent any cross subsidization or increase stranded costs. Individual Codes of Conduct will never assure that all companies adhere to the same rules. Consumers must be assured that the playing field is equal for all parties. This agreement will delay any competition until at least 2002 and may, in effect, delay real competition for small consumers into the foreseeable future.

### **4. UNBUNDLED RATES**

4.6. Tucson Electric Power Co. should recover their appropriate stranded costs but must not be allowed to over recover. They will have avoided costs that should lower and not increase CTC charges. They should only recover expenditures of assets that are quantifiable. The unbundled UDC generation should not be included in its recovery as it no longer part of the utility assets. The cost of implementation of competitive environment should not be a recoverable cost as all entities in the market face implementation costs.

### **5. RATE REDUCTIONS**

5.1. What are the dates these that these rate reductions are based? Would further reduction accrue to consumers without this type of agreement?

5.3- This section freezes any further reductions in rates could result in a competitive market.

## **6. TARIFF FILINGS**

6.1- There is no data to suggest that the tariff fillings in this agreement are just and reasonable and based on costs. Also, it does not allow for a downward adjustment based on lower costs.

## **7. CODE OF CONDUCT**

7.1. All codes of conduct and affiliation rules must be in place prior to the implementation of competition. The rules must be the same for all, utilities and providers. The playing field must level for all.

## **8. CERTIFICATE OF CONVENIENCE AND NECESSITY**

8.1. The proposition that Tucson Electric Power Company's is inviolable has not been validated by the courts. In fact recent court decisions appear to validate the opposite position.

## **10. RESOLUTION OF LITIGATION**

10.1- Tucson Electric Power Company asks that litigation dismissed, and that the Commission and all parties oppose any litigation of the issues in this matter. We believe that as an elected regulatory body charged with the protection of consumers and ratepayers, this request asks the Commission to fail in its charge of protection.

## **11. LOW INCOME PROGRAMS**

11.1. Setting a flat dollar amount for discounts may put those receiving the discount at risk for higher costs. For example, if the unbundled rate raises certain fixed costs, i.e., basic rates, than a fixed dollar discount will represent a lowering of the subsidy.

## **12. WAVERS**

12.1. Affiliate rules should not be waved. The affiliate rules represent a major protection for consumers.

## **13. CONTINGENCIES TO SETTLEMENT AGREEMENT**

13.1. This ties the Commission's hands in enforcing current Rules especially on stranded costs. It changes Decision 60799 and attempts to enforce a mandate on future Commissions, the Arizona Legislature or the people.

13.2. This change seems to allow TEP to go forward or to deny retail competition on its own volition.

13.3. TEP appears to retain power to modify or change this agreement on issues not to its liking by withdrawing. This ability is, however, not the same for all parties, like the Commission or the public.

13.4-5. We are unclear how or what constitutes an emergency. If Tucson Electric Power Company cannot get adequate financing, should captive rate payers be held hostage?

13.6. This may allow TEP a possible rate increase that is inconsistent with their unbundled filing that is to freeze rates. See also 4.1 of this proposed settlement agreement.

#### **14. MISCELLANEOUS PROVISIONS**

14.3. This section inappropriately binds future commissions.

14.4.. How can this agreement go into effect if challenged in court and becomes subject to court orders? This section appears to give TEP veto power of Commission actions.

14.6. The proposed settlement agreement is being used to nullify Commission decisions without going through the Hearing process.

**In summary, we cannot support the Settlement Agreement as proposed.**

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of July, 1999

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Albert Sterman  
Vice President  
Arizona Consumers Council

AN ORIGINAL AND TEN COPIES  
of the foregoing filed this 28<sup>th</sup> day of  
July, 1999 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007

Copies of the foregoing mailed this  
28<sup>th</sup> day of July; 1999 to the service  
list.